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*Attorneys for Defendants Frontier Airlines, Inc.,
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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PETER DELVECCHIA, individually and as
next friend of A.D., a Minor,

Plaintiffs,

v.

FRONTIER AIRLINES, INC., SCOTT
WARREN, REX SHUPE,

Defendants.

Case No.: 2:19-cv-01322-KJD-DJA

**FRONTIER AIRLINES, INC.'S
MOTION FOR PROTECTIVE
ORDER**

**DEFENDANT FRONTIER AIRLINES, INC.'S MOTION FOR PROTECTIVE ORDER
REGARDING EXHIBIT A TO PLAINTIFFS' MOTION FOR SANCTIONS**

Defendant FRONTIER AIRLINES, INC. ("Frontier"), by its undersigned counsel, moves this Court for a protective order pursuant to Fed. R. Civ. P. 26 and LR 26-6 as to certain documents produced in discovery that Frontier designated as "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" pursuant to the Parties' Agreed Protective Order ("Protective Order") entered by the Court on October 10, 2019 (ECF #37). Frontier's Motion is premised on the

1 attached Memorandum of Points and Authorities, the pleadings, and other papers on file in this
2 matter, and any oral argument this Court may entertain.

3 Date: September 20, 2021

Respectfully submitted,

4 **FRONTIER AIRLINES, INC.**

5 /s/ Brian T. Maye

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15 **Certification Pursuant to LR 26-6(c)**

16 Counsel for Frontier has made good faith efforts to resolve all of the matters discussed
17 in this Motion without Court intervention, but all such efforts have been unsuccessful. The
18 meet-and-confer included an effort by attorney Brian Maye (representing Frontier) to speak
19 with Attorney John McKay on September 17, 2021. Mr. McKay was not available, so Mr.
20 Maye left a detailed voice message regarding the subject of this motion. Mr. Maye then
21 emailed Mr. McKay explaining the substance of this motion and asking Mr. McKay to call Mr.
22 Maye. On September 20, 2021, Mr. McKay emailed Mr. Maye, stating that a telephone call
23 was unnecessary in that Plaintiffs continue to maintain their position that the subject documents
24 were improperly designated as confidential. Mr. McKay also stated that he was out of the
25 country.
26
27
28

FRONTIER’S MEMORANDUM OF POINTS AND AUTHORITIES

I. THE PROTECTIVE ORDER

At the outset of discovery, the Court entered the parties’ proposed Protective Order. (ECF #37). The Protective Order allows either party to designate as confidential any documents “which a party believes, in good faith, contain sensitive security information, personal health information, trade secrets, proprietary information, research, technical, commercial, or final information, or other confidential material...” (ECF #37 at ¶ 1). A party may contest the applicability of the Protective Order to the material marked as confidential by “notifying the attorneys for the party producing the material and identifying the material contested.” (*Id.* at ¶ 3). Upon such notification, “the attorneys for the producing party shall have thirty days in which to make a specific Motion for Protective Order with respect to such material.” (*Id.*).

In their Motion to File Under Seal, Plaintiffs challenge the applicability of the Protective Order to the documents at issue, claiming that they do not contain ‘confidential information’ worthy of protection. *See* ECF # 130. Given Plaintiffs’ notice, Frontier now seeks a specific protective order with respect to the challenged documents.

II. THE CONFIDENTIAL DOCUMENTS

There are 128 pages of documents currently at issue. All of the documents relate to incidents of suspected human and/or sex trafficking involving Frontier passengers or to incidents of alleged racial discrimination involving Frontier employees. The documents, and the underlying incidents, do not pertain to the incident at issue in this lawsuit. Nor do the documents involve or mention either of the Plaintiffs or any of the Frontier employees involved here. The majority of the documents are internal Frontier reports which are kept strictly confidential, and which are not disclosed by Frontier and are not disseminated publicly in any manner. The documents concerning suspected human and/or sex trafficking primarily concern passengers who are minors, and nearly all the reports disclose detailed information, such as flight dates, flight

1 numbers, departure/arrival destinations and detailed descriptions of the passengers involved.
 2 Given that these documents are considered confidential by Frontier, the passengers involved are
 3 ostensibly unaware that these internal reports even exist. Other documents include years old
 4 complaints of alleged discrimination by passengers against Frontier employees (whose names are
 5 identified) and which were previously addressed by Frontier with those involved.¹

6 **III. LEGAL STANDARD**

7
 8 A party or any person from whom discovery is sought may move for a protective order in
 9 the court where the action is pending. Fed. R. Civ. P. 26(c)(1). The court may, for good cause,
 10 issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue
 11 burden or expense...” *Id.* In order to obtain a protective order, “the moving party bears the
 12 burden of showing ‘good cause’ by demonstrating harm or prejudice that will result from the
 13 discovery. The moving party must demonstrate a ‘particular and specific need’ for the protective
 14 order.” *Carreon v. Smith’s Food & Drug Stores*, Case No. 2:18-cv-01933-APG-NJK, 2019 U.S.
 15 Dist. LEXIS 30026, at *4 (D. Nev. Feb. 26, 2019) (internal citations omitted).

16 **IV. ARGUMENT**

17
 18 Frontier designated the subject documents as CONFIDENTIAL because they contain
 19 personal and sensitive information which Frontier maintains in strict confidence. Disclosing this
 20 sensitive information outside the confines of this litigation would have no impact on the
 21 litigation itself and would only risk harming the individuals identified and Frontier. Plaintiffs
 22 have previously admitted that they wish to contact the individuals involved in the other incidents
 23 (ECF 128, p. 3-4, 6), but have identified no legitimate basis for doing so. Because federal case
 24

25
 26
 27 ¹ The names and contact information of the passengers, whether minor or otherwise, involved in the prior incidents,
 28 have been redacted, which is the subject of a separate motion. (See ECF #128).

1 law supports Frontier's request that the confidentiality of such documents be maintained, the
2 Court should grant the instant Motion for Protective Order.

3 In *Dozier v. Waffle House, Inc.*, the plaintiffs brought discrimination claims asserting that
4 they were denied services because of their race. During discovery, Waffle House produced
5 documents related to (1) its investigation of the subject incident and (2) other customer
6 complaints involving the Waffle House location at issue in the case. 2005 U.S. Dist. LEXIS
7 40245, at *40 (N.D. Ga. May 4, 2005). The plaintiffs thereafter challenged Waffle House's
8 designation of the documents as confidential.
9

10 The court ruled that the documents contained proprietary information reflecting the
11 Company's investigative process and incorporating information from its confidential database. *Id.*
12 at *43. The court determined that the interest in maintaining the confidentiality of these
13 documents outweighed any slight interest the plaintiffs had in collaborating with other Waffle
14 House litigants. *Id.* The court further observed that disclosure of these documents would
15 constitute an invasion of the privacy of Waffle House's customers who utilized the 1-800 number
16 to voice their complaints. *Id.* at *45. "Waffle House has an interest in encouraging customer
17 feedback and, therefore, protecting the privacy of customers." *Id.* Additionally, because the
18 complaints were inflammatory and/or unverified, disclosing them would constitute an
19 unwarranted invasion of the employees' privacy. *Id.* The *Dozier* court upheld the confidential
20 designation and rejected the plaintiffs' request for public disclosure of documents related to prior
21 complaints involving the subject store.
22
23

24 Similarly, in *Abreu v. New Jersey*, the plaintiff sought materials relating to complaints of
25 discrimination and retaliation made by other employees of the defendants. 2015 U.S. Dist. LEXIS
26 172621, at *18-20 (D.N.J. Dec. 29, 2015). The defendants objected to the production of those
27 materials because they (1) "implicate[d] the privacy interests of non-parties;" and (2) to the extent
28 they related to facilities other than that at which the plaintiff worked, such information was not

1 relevant. *Id.* The court agreed, ruling that only complaints involving the facility at which the
2 plaintiff worked were discoverable, and the production of those complaints would be subject to a
3 protective order. *Id.* at *20. Further, the court found that the plaintiff had only demonstrated a
4 need to learn about the *nature* of the complaints in question. Because the plaintiff failed to show
5 a need for the *specific identities* of any of the complainants, the Court directed that the materials
6 be produced in redacted form. *Id.*

7
8 The courts in *Dozier* and *Abreu* upheld confidentiality protections for documents with
9 similar, if not lesser, potentially negative ramifications than the Frontier documents at issue here.
10 Consistent with both cases, the privacy interests of the non-parties identified in the subject
11 documents here would be significantly implicated. The subject documents reveal the names of
12 (1) Frontier employees and passengers² who were involved in suspected trafficking incidents, and
13 (2) Frontier employees who were the subjects of highly inflammatory and disputed customer
14 complaints. Public disclosure of the documents, and thus of the individual identities contained
15 therein, could cause undue and wholly unnecessary hardship to those individuals, who are not
16 parties to this litigation.

17
18 Public disclosure of documents concerning other incidents, whether suspected trafficking
19 or alleged discrimination, and how Frontier handled its investigation and the individuals involved,
20 could also result in unwarranted and unnecessary negative commercial repercussions to Frontier.
21 Frontier's interest in maintaining the confidentiality of its internal confidential reports describing
22 wholly unrelated incidents and demonstrating how Frontier addressed those situations in
23 accordance with their internal policies and procedures, greatly outweighs any interest that would
24 be served by publicly disclosing these documents. *See Gillum v. ICF Emergency Mgmt. Servs.*,

25
26
27 ² The names of the passengers involved in the prior incidents have been redacted, which is the subject of a separate
28 motion. (*See* ECF #128).

1 *L.L.C.*, No. 08-314-C-M2, 2009 U.S. Dist. LEXIS 60693, at *33-34 (M.D. La. July 16, 2009) (to
2 protect the privacy of the employees who filed complaints, the information shall be produced
3 subject to the protective order); *see also Republic Servs. v. Liberty Mut. Ins. Cos.*, No. 03-494-
4 KSF, 2006 U.S. Dist. LEXIS 38752, at *22 (E.D. Ky. June 9, 2006) (good cause established for
5 the entry of a protective order relating to claims handling and training materials). Under the
6 balancing standard, the district judge must compare the hardship to the party against whom
7 discovery is sought against the probative value of the information to the party. *Dozier*, 2005 U.S.
8 Dist. LEXIS 40245, at *41. Moreover, maintaining the confidentiality of these documents would
9 not hinder Plaintiffs' ability to prosecute their case in any way.

11 In addition to factors discussed above, courts cannot overlook the public's interest in
12 maintaining the privacy of personal information disclosed during investigations and held by
13 others. The public has a wide-reaching interest in (1) maintaining the confidentiality of
14 documents that involve protecting people who provide information to investigators, and (2)
15 protecting the integrity of the investigative process, itself. *McKenna v. City of Phila.*, 2000 U.S.
16 Dist. LEXIS 15735, at *6-7 (E.D. Pa. Sep. 29, 2000). Here, the public's interests are aligned with
17 the interests of the individuals who were involved in reporting and responding to the incidents of
18 suspected human trafficking. Both the public and the individuals have a strong interest in
19 maintaining the confidentiality of these records. *See Rosenblit v. City of Phila.*, No. 20-3121-
20 KSM, 2021 U.S. Dist. LEXIS 16042, at *11 (E.D. Pa. Jan. 28, 2021) ("The interests of the
21 plaintiff with regard to...complaints with the EEOC cannot overcome the privacy and safety
22 interests that the [d]efendants and the public have in their confidentiality."). The candor of people
23 providing information related to investigations of illegal and discriminatory conduct is essential to
24 the investigative process, and "could 'chill' such candor in the future." *McKenna*, 2000 U.S. Dist.
25 LEXIS 15735, at 8*.

1 In sum, the interests of the individuals discussed above, Frontier, and the general public
 2 each weigh heavily in favor of maintaining the confidentiality of the subject documents. The
 3 Court should grant the instant Motion for Protective Order.

4 V. CONCLUSION

5 For the foregoing reasons, Defendant, Frontier Airlines, Inc. requests that this Court enter
 6 a protective order maintaining the confidentiality of the documents in Exhibit A to Plaintiffs'
 7 Motion for Sanctions, and for such further relief as this Court deems just and reasonable.
 8

9 DATED this 20th day of September, 2021

Respectfully submitted,

10 **FRONTIER AIRLINES, INC.**

11 /s/ Brian T. Maye

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CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2021, I caused the foregoing to be electronically filed with the United States District Court for the District of Nevada using the CM/ECF system.

/s/ Brian T. Maye

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